



February 11, 2003

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## HOUSE BILL No. 1479

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DIGEST OF HB 1479 (Updated February 6, 2003 10:03 AM - DI 97)

**Citations Affected:** IC 34-6; IC 34-51.

**Synopsis:** Comparative fault. Amends the definition of "nonparty" for purposes of comparative fault. Allows a jury to be informed that a person who may be at fault is immune from liability. Requires a jury to determine percentages of fault only of persons who may be liable. Repeals a provision that establishes 90 day time limit for filing a nonparty defense in a malpractice case when a claim against a qualified health provider is filed with the insurance commissioner.

**Effective:** July 1, 2003.

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January 15, 2003, read first time and referred to Committee on Insurance, Corporations and Small Business.  
February 10, 2003, amended, reported — Do Pass.

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HB 1479—LS 7474/DI 106+



February 11, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1479

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 34-6-2-88 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 88. "Nonparty", for  
3 purposes of IC 34-51-2, means a person who ~~caused or contributed to~~  
4 ~~cause the alleged injury; death; or damage to property is or may be~~  
5 **liable to the claimant in part or in whole for damages claimed** but  
6 who has not been joined in the action as a defendant. **The term does**  
7 **not include an employer of the claimant.**

8 SECTION 2. IC 34-51-2-7 IS AMENDED TO READ AS  
9 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) This section  
10 applies to an action based on fault that is:

11 (1) brought against one (1) defendant or two (2) or more  
12 defendants who may be treated as a single party; and

13 (2) tried to a jury.

14 (b) The court, unless all the parties agree otherwise, shall instruct  
15 the jury to determine its verdict in the following manner:

16 (1) The jury shall determine the percentage of fault of the  
17 claimant, of the defendant, and of any person who is a nonparty.

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The jury may not be informed of any immunity defense that is available to a nonparty. In assessing percentage of fault, the jury shall consider the fault of all persons who caused or contributed to cause the alleged injury, death, or damage to property, tangible or intangible, regardless of whether the person was or could have been named as a party. The percentage of fault of parties to the action may total less than one hundred percent (100%) if the jury finds that fault contributing to cause the claimant's loss has also come from a nonparty or nonparties.

(2) If the percentage of fault of the claimant is greater than fifty percent (50%) of the total fault involved in the incident which caused the claimant's death, injury, or property damage, the jury shall return a verdict for the defendant and no further deliberation of the jury is required.

(3) If the percentage of fault of the claimant is not greater than fifty percent (50%) of the total fault, the jury then shall determine the total amount of damages the claimant would be entitled to recover if contributory fault were disregarded.

(4) The jury next shall multiply the percentage of fault of the defendant by the amount of damages determined under subdivision (3) and shall then enter a verdict for the claimant in the amount of the product of that multiplication.

SECTION 3. IC 34-51-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) This section applies to an action based on fault that:

- (1) is brought against two (2) or more defendants; and
- (2) is tried to a jury.

(b) The court, unless all the parties agree otherwise, shall instruct the jury to determine its verdict in the following manner:

(1) The jury shall determine the percentage of fault of the claimant, of the defendants, and of any person who is a nonparty. ~~The jury may not be informed of any immunity defense that might be available to a nonparty. In assessing percentage of fault, the jury shall consider the fault of all persons who caused or contributed to cause the alleged injury, death, or damage to property, tangible or intangible, regardless of whether the person was or could have been named as a party.~~ The percentage of fault of parties to the action may total less than one hundred percent (100%) if the jury finds that fault contributing to cause the claimant's loss has also come from a nonparty or nonparties.

(2) If the percentage of fault of the claimant is greater than fifty percent (50%) of the total fault involved in the incident which

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1 caused the claimant's death, injury, or property damage, the jury  
2 shall return a verdict for the defendants and no further  
3 deliberation of the jury is required.

4 (3) If the percentage of fault of the claimant is not greater than  
5 fifty percent (50%) of the total fault, the jury shall then determine  
6 the total amount of damages the claimant would be entitled to  
7 recover if contributory fault were disregarded.

8 (4) The jury next shall multiply the percentage of fault of each  
9 defendant by the amount of damages determined under  
10 subdivision (3) and shall enter a verdict against each defendant  
11 (and such other defendants as are liable with the defendant by  
12 reason of their relationship to a defendant) in the amount of the  
13 product of the multiplication of each defendant's percentage of  
14 fault times the amount of damages as determined under  
15 subdivision (3).

16 SECTION 4. IC 34-51-2-17 IS REPEALED [EFFECTIVE JULY 1,  
17 2003].

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, Corporations and Small Business, to which was referred House Bill 1479, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 34-6-2-88 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 88. "Nonparty", for purposes of IC 34-51-2, means a person who ~~caused or contributed to cause the alleged injury, death, or damage to property is or may be~~ **liable to the claimant in part or in whole for damages claimed** but who has not been joined in the action as a defendant. **The term does not include an employer of the claimant.**

SECTION 2. IC 34-51-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) This section applies to an action based on fault that is:

- (1) brought against one (1) defendant or two (2) or more defendants who may be treated as a single party; and
- (2) tried to a jury.

(b) The court, unless all the parties agree otherwise, shall instruct the jury to determine its verdict in the following manner:

- (1) The jury shall determine the percentage of fault of the claimant, of the defendant, and of any person who is a nonparty. ~~The jury may not be informed of any immunity defense that is available to a nonparty. In assessing percentage of fault, the jury shall consider the fault of all persons who caused or contributed to cause the alleged injury, death, or damage to property, tangible or intangible, regardless of whether the person was or could have been named as a party.~~ The percentage of fault of parties to the action may total less than one hundred percent (100%) if the jury finds that fault contributing to cause the claimant's loss has also come from a nonparty or nonparties.
- (2) If the percentage of fault of the claimant is greater than fifty percent (50%) of the total fault involved in the incident which caused the claimant's death, injury, or property damage, the jury shall return a verdict for the defendant and no further deliberation of the jury is required.
- (3) If the percentage of fault of the claimant is not greater than



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fifty percent (50%) of the total fault, the jury then shall determine the total amount of damages the claimant would be entitled to recover if contributory fault were disregarded.

(4) The jury next shall multiply the percentage of fault of the defendant by the amount of damages determined under subdivision (3) and shall then enter a verdict for the claimant in the amount of the product of that multiplication.

SECTION 3. IC 34-51-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) This section applies to an action based on fault that:

- (1) is brought against two (2) or more defendants; and
- (2) is tried to a jury.

(b) The court, unless all the parties agree otherwise, shall instruct the jury to determine its verdict in the following manner:

(1) The jury shall determine the percentage of fault of the claimant, of the defendants, and of any person who is a nonparty. ~~The jury may not be informed of any immunity defense that might be available to a nonparty. In assessing percentage of fault, the jury shall consider the fault of all persons who caused or contributed to cause the alleged injury, death, or damage to property, tangible or intangible, regardless of whether the person was or could have been named as a party.~~ The percentage of fault of parties to the action may total less than one hundred percent (100%) if the jury finds that fault contributing to cause the claimant's loss has also come from a nonparty or nonparties.

(2) If the percentage of fault of the claimant is greater than fifty percent (50%) of the total fault involved in the incident which caused the claimant's death, injury, or property damage, the jury shall return a verdict for the defendants and no further deliberation of the jury is required.

(3) If the percentage of fault of the claimant is not greater than fifty percent (50%) of the total fault, the jury shall then determine the total amount of damages the claimant would be entitled to recover if contributory fault were disregarded.

(4) The jury next shall multiply the percentage of fault of each defendant by the amount of damages determined under subdivision (3) and shall enter a verdict against each defendant (and such other defendants as are liable with the defendant by reason of their relationship to a defendant) in the amount of the product of the multiplication of each defendant's percentage of fault times the amount of damages as determined under subdivision (3)."

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Renumber all SECTIONS consecutively.  
and when so amended that said bill do pass.

(Reference is to HB 1479 as introduced.)

FRY, Chair

Committee Vote: yeas 7, nays 5.

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